

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06

ACDA-07 TRSE-00 SAJ-01 OMB-01 BIB-01 IO-13 /082 W

----- 089631

R 021525Z SEP 76

FM USMISSION USBERLIN

TO AMEMBASSY BONN

INFO SECSTATE WASHDC 3028

AMEMBASSY BERLIN UNN

AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

USMISSION NATO

C O N F I D E N T I A L USBERLIN 1828

E O 11652: GDS

TAGS: PGOV, PFOR, WB, GW, UR

SUBJ: RESPONSES TO SOVIET PROTESTS OF AUGUST 26

REFS: A) USBERLIN 1784; B) USBERLIN 1788 (NOTAL)

C) USBERLIN 1789 (NOTAL); D) BONN 14647;

E) BONN 8931

1. ALLIED MISSIONS HAVE AGREED TO RECOMMEND FOLLOWING
TEXTS TO EMBASSIES FOR USE IN RESPONSE TO SOVIET PROTESTS
OF AUGUST 26:

A. BEGIN TEXT: WITH RESPECT TO YOUR STATEMENT
OF AUGUST 26 ON A MEETING IN BERLIN OF CDU MEMBERS OF THE
SAARBRUECKEN LANDTAG, I HAVE BEEN ASKED BY THE THREE
ALLIED GOVERNMENTS TO REFER YOU TO THE STATEMENTS MADE
BY THEIR REPRESENTATIVES IN CONNECTION WITH A SIMILAR
MATTER TO THE SOVIET EMBASSIES IN LONDON, PARIS, AND
WASHINGTON ON MAY 28, 1976. THESE WERE IN RESPONSE TO
STATEMENTS MADE BY THE SOVIET EMBASSIES ON APRIL 30,
1976. OUR POINT OF VIEW REMAINS UNCHANGED. END TEXT.

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B. BEGIN TEXT: WITH RESPECT TO YOUR STATEMENT OF

AUGUST 26, I HAVE BEEN ASKED TO ADVISE YOU ON BEHALF OF THE THREE ALLIED GOVERNMENTS THAT FEDERAL JUSTICE MINISTER VOGEL DID, AS REPORTED IN THE PRESS, PARTICIPATE IN THE CEREMONIES MARKING THE ASSUMPTION OF OFFICE OF THE NEW PRESIDENT OF THE BUNDESVERWALTUNGSGERICHT AUGUST 19. HIS PARTICIPATION DID NOT, HOWEVER, INVOLVE AN ACT "IN EXERCISE OF DIRECT STATE AUTHORITY OVER THE WESTERN SECTORS OF BERLIN" AS DESCRIBED IN THE LETTER OF THE THREE AMBASSADORS TO THE FEDERAL CHANCELLOR CONCERNING THE INTERPRETATION OF ANNEX II OF THE QUADRIPARTITE AGREEMENT OF SEPTEMBER 3, 1971. THERE WAS, THEREFORE, NO CONSTITUTIONAL OR OFFICIAL ACT WHICH CONTRADICTED THE PROVISIONS OF PARAGRAPH 1 OF THE ANNEX TO THE EFFECT THAT "THE TIES BETWEEN THE WESTERN SECTORS OF BERLIN AND THE FEDERAL REPUBLIC OF GERMANY WILL BE MAINTAINED AND DEVELOPED, TAKING INTO ACCOUNT THAT THESE SECTORS CONTINUE NOT TO BE A CONSTITUENT PART OF THE FEDERAL REPUBLIC OF GERMANY AND NOT TO BE GOVERNED BY IT." END TEXT.

2. COMMENT: OUR INFORMATION CONFIRMS THAT REPORTED REF D TO THE EFFECT THAT WHILE SAARLAND VISIT HAS BEEN BILLED AS JOINT MEETING OF SAAR GOVERNMENT AND CDU LANDTAG FRAKTION IT IS ACTUALLY ONLY LATTER THOUGH ALL MEMBERS OF LAND CABINET ARE ALSO MEMBERS OF CDU FRAKTION. HEAD OF SENAT CHANCELLERY HERZ, HIMSELF A GOOD SPD MAN, SHRUGGED WHEN ASKED BY SENAT LIAISON OFFICE WHY VISIT WAS BEING PORTRAYED IN SOMEWHAT GRANDER FASHION THAN VISIT OF CDU FRAKTION OF SCHLESWIG-HOLSTEIN LANDTAG HAD BEEN LAST MAY AND SAID THAT HE ASSUMED IT WAS A CDU ELECTION POLICY OF "ESCALATION." BERLIN PRESS NOTES SEPTEMBER 2 THAT SAARLAND MINISTER PRESIDENT ROEDER MET PREVIOUS DAY WITH GOVERNING MAYOR SCHUETZ TO URGE SENAT SUPPORT FOR SAARBRUECKEN-BERLIN AIR LINK WHICH FRENCH LINE AIR ALSACE WISHES TO ESTABLISH. PRESS ALSO REPORTS THAT CDU FRAKTION WILL DISCUSS NATIONAL STIFTUNG AS WELL AS AVIATION QUESTION SEPTEMBER 2.

3. MISSIONS AGREED THAT IT WOULD NOT BE PROFITABLE
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TO ENGAGE SOVIETS IN DISCUSSION ABOUT EXACT NATURE OF SAARLAND VISIT. ALLIES AGREED AT TIME OF SCHLESWIG-HOLSTEIN VISITATION LAST SPRING THAT QA LIMITATIONS OF FEDERAL GOVERNMENTS AND ITS ORGANS DO NOT APPLY TO LAND GOVERNMENTS. EVEN MORE TO POINT, SOVIETS THEMSELVES DREW PARALLEL WITH SCHLESWIG-HOLSTEIN CASE AND STATED "THIS POINT OF VIEW OF OUR REMAINS UNCHANGED." MISSION CONSIDERED, THEREFORE, THAT BEST AND BRIEFEST

RESPONSE WOULD SIMPLY BE TO REFER TO PREVIOUS ALLIED
VIEWS EXPRESSED IN CAPITALS (REF E).

4. WE ASSUMED THAT SOVIET INTEREST IN JUSTICE
MINISTER'S ACTIVITIES WERE PIQUED BY NEWSPAPER HEADLINES
VSUCH AS THAT WHICH APPEARED IN TAGESSPIEGEL AUGUST 20:
PROFESSOR FUERST NEW PRESIDENT OF THE FEDERAL ADMIN-
ISTRATIVE COURT -- INAUGURATION INTO OFFICE YESTERDAY
BY FEDERAL JUSTICE MINISTER VOGEL." WHAT ACTUALLY
OCCURRED AT COURT BUILDING WAS PRESUMEDLY PROCEDURE
SET FORTH IN JUDGES LAW (RICHTERGESETZ), NAMELY THAT
MINISTER PRESENTED TO PROFESSOR FUERST HIS COMMISSION
OF OFFICE (ERNENNUNGSURKUNDE) WHICH HAD PREVIOUSLY
BEEN SIGNED BY FRG PRESIDENT. ACCORDING TO PRESS
REPORTS, VOGEL ALSO DELIVERED A SPEECH.

5. LETTER OF THREE ALLIED AMBASSADORS TO FEDERAL
CHANCELLOR CONCERNING INTERPRETATION OF ANNEX II OF
QA STATES THAT "THE PHRASE IN PARAGRAPH 2 OF ANNEX II
OF THE QUADRIpartite AGREEMENT WHICH READS 'WILL NOT
PERFORM IN THE WESTERN SECTORS OF BERLIN CONSTITUTIONAL
OR OFFICIAL ACTS WHICH CONTRADICT THE PROVISIONS OF
PARAGRAPH II SHALL BE INTERPRETED TO MEAN ACTS IN
EXERCISE OF DIRECT STATE AUTHORITY OVER THE WESTERN
SECTORS OF BERLIN." WHILE CONCEDED THAT SOVIETS
MUST BE GIVEN FULL MARKS FOR MICROSCOPIC CARE WITH
WITH WHICH THEIR EMBASSY READS NEWSPAPERS, IT CAN BE
ARGUED THAT VOGEL'S ACT, THOUGH OFFICIAL, PERFORMED
IN BERLIN AND PERHAPS INJUDICIOUS, DID NOT INVOLVE
EXERCISE OF DIRECT STATE AUTHORITY OVER BERLIN.
MISSIONS AGREED THAT IN ANY EVENT THIS WAS LINE WE
WOULD NEED TO TAKE WITH SOVIETS.GEORGE

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TEXT, DIPLOMATIC COMMUNICATIONS, DIPLOMATIC PROTESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 02 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: BoyleJA
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976USBERL01828
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760333-0974
From: USBERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760995/aaaaddrf.tel
Line Count: 146
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: 76 USBERLIN 1784, 76 USBERLIN 1788
Review Action: RELEASED, APPROVED
Review Authority: BoyleJA
Review Comment: n/a
Review Content Flags:
Review Date: 20 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <20 APR 2004 by CollinP0>; APPROVED <11 AUG 2004 by BoyleJA>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: RESPONSES TO SOVIET PROTESTS OF AUGUST 26
TAGS: PGOV, PFOR, WB, GE, UR
To: BONN
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006